

Responsiveness Summary

Draft Guidelines for Preparation of Comprehensive Irrigation
District Management Plans

April 2001

Responsiveness Summary

Draft Guidelines for Preparation of Comprehensive Irrigation District Management Plans

Table of Contents

Introduction and Background.....	2
Summary of the Public Involvement Actions	3
Comments and Responses: Informal Comment Period and Public Workshops	6
Agency Roles.....	6
Anticipated Timeframes	7
CIDMP & Relationships to FOTG Process.....	7
Contact Information in Appendix A	7
District Operations	8
Endangered Species Act & Clean Water Act.....	9
Financial Issues	15
Integrating with other Watershed Initiatives	16
Public Involvement/Outreach.....	17
Tribal Issues	18
Water Flow Issues	19
Miscellaneous	20

Introduction and Background

The Agriculture, Fish, and Water (AFW) process was launched in December 1999. AFW is an integral part of Governor Locke's Statewide Salmon Recovery Strategy and was created in an effort to address fish recovery and water quality on farmland. The AFW process consists of two concurrent processes: the Field Office Technical Guide (FOTG) process and the Irrigation Districts' Guideline Development process. While the FOTG process works directly with agricultural producers revising on-farm practices used to create farm plans, the Irrigation Districts' Guideline Development process operates with Irrigation Districts to help create guidelines that will address water use and conservation, as well as water quality requirements. The ultimate goal of both processes is to provide regulatory certainty and to conserve natural resources.

The "Guidelines for Preparation of the Comprehensive Irrigation District Management Plans" (CIDMP) document will serve as an aid to Irrigation Districts preparing comprehensive management plans. It is a voluntary approach used to guide Irrigation Districts in creating management plans that conform to the Endangered Species Act (ESA) and the Clean Water Act (CWA). The process of creating a management plan using the CIDMP involves a coordinated effort between the Irrigation District, state/federal regulatory agencies and affected tribes to customize a compliance pathway specific to that Irrigation District. The guidelines provide sideboards to that customization process that are intended to expedite regulatory compliance.

The draft CIDMP document was developed by a workgroup representing all of the caucuses involved in the AFW Irrigation Districts' process, and took over a year to complete. An informal public comment period took place February 12-March 13, 2001. Comments were received at three public workshops and written comments were submitted during this review opportunity. This responsiveness summary addresses comments received concerning the draft CIDMP document. Comments are footnoted, and a corresponding key is on page 21.

A final version of the guidelines document is expected to be available mid-May 2001. The final version of the CIDMP (like the draft) will be available in three formats: a hard copy, on CD, and by accessing the Washington Conservation Commission's website: <http://www.conserver.org/afw>

Summary of the Public Involvement Actions

Prior to the public comment period that ran from February 12 through March 13, 2001, a public notice (see next page) was sent to approximately 1200 interested parties, including:

- All Washington State Irrigation District and Conservation District offices,
- WSU Cooperative Extension offices,
- Environmental organizations,
- Legislators and legislative staff,
- State and federal agencies,
- Agricultural interests,
- County commissioners,
- Associations,
- City and county planning directors,
- County public works directors, and
- Media.

Informational packets were sent to all Tribal Chairs that included the public notice and a copy of the draft "Guidelines for Preparation of Comprehensive Irrigation District Management Plans."

The draft document was available for review in three formats: hard copy, on CD, and on the Washington Conservation Commission's website. The draft document was accessed on the web at least 80 times during the informal public comment period.

During the public comment, AFW participants met with legislators and environmental organizations to discuss the draft guidance document.

Public workshops were held, two at each site, in Olympia (February 26), Wenatchee (February 28), and Kennewick (March 1) to discuss the draft guidance document. A total of 32 people, ranging from Irrigation District staff and board members to the general public attended the workshops. The draft document was well received and written comments were submitted by six entities.

Public Workshops Notice

AFW Process Releases Draft Guidelines for Informal Public Review

The Agriculture, Fish and Water (AFW) Irrigation District process has released a draft guidelines document for irrigation districts on how to prepare comprehensive management plans. The management plans would focus on enhancing and protecting habitat for endangered fish and wildlife, while also addressing state water quality needs through a voluntary process. The document, entitled "Guidelines for Preparation of Comprehensive Irrigation District Management Plans" takes a step-by-step guidance approach for water conservation and Endangered Species Act (ESA) and Clean Water Act (CWA) planning for irrigation districts in Washington State.

The process described within the document encourages early cooperation between irrigation districts and agencies in order to assess district operations and to set a course for addressing any necessary changes. It explains the various pathways to ESA compliance and districts can choose a compliance pathway according to their needs. It does not infringe on farmers' rights to use water, instead it looks at improving delivery system efficiencies to benefit water users, while also benefiting aquatic habitat.

A dedicated workgroup spent over a year developing "Guidelines for Preparation of Comprehensive Irrigation District Management Plans." The extensive collaboration during this manual's development has led to a better understanding by all participants of the varied values, legal requirements, constraints and needs associated with the ESA and CWA. Revised drafts of the document were shared with the Executive Committee throughout the process.

There are 97 irrigation districts in Washington serving water to over one million acres. This AFW process will most benefit smaller districts that lack the resources to hire additional staff or consultants to help them with ESA and CWA, but all districts could gain by the process. AFW provides the opportunity to create a voluntary process for irrigation districts to get coverage under a federal 4(d) rule for threatened/endangered species.

A major incentive to use the guidance document is a coordinated process with clear expectations on how the process will proceed and identifying funding for planning and implementation phases.

**Informal
Comment Period:
February 12-March 13**

**Public Workshops
3:00 and 7:00 pm at
each location:**

February 26, 2001
Labor & Industries Bldg.
Auditorium
7273 Linderson Way SE
Tumwater, WA 98501

February 28, 2001
Wenatchee Convention
Center, Rooms: Gala 3-4
201 N. Wenatchee Ave.
Wenatchee, WA 98801

March 1, 2001
Benton County PUD
Auditorium
2721 W. 10th Ave.
Kennewick, WA 99336

Send comments to:
Paula Smith
WA Conservation Comm.
PO Box 47721
Olympia, WA 98504-7721
e-mail: psmi461@ecy.wa.gov

*The WA Conservation Commission
is an affirmative action and equal
opportunity agency.*

*For special accommodation needs,
call (360) 407-6209 or
(360) 407-6006 (TDD).*

Informal comment period

Beginning February 12, 2001, the draft document is out for a 30-day informal public comment period. We are looking for feedback and suggestions on how to improve the document. There are also three rounds of public workshops scheduled for Wenatchee, Tri-Cities and Olympia (see sidebar, page one). Additional meetings will be held as needed or requested.

Pilot projects

One of the next steps includes working on identifying irrigation districts willing to be involved in a pilot project using the guidance document. We are currently seeking funding to cover the costs associated with the pilot projects.

Background

The AFW process kicked off in December 1999 and contains two consecutive processes. Besides the Irrigation Districts' process, the other is an effort to update farm conservation practice standards found in the "Field Office Technical Guide" (FOTG), developed by the federal Natural Resources Conservation Service.

The FOTG process has been reviewing practices pertaining to ditch maintenance in Northwest Washington. The result will be a guidance document to help farmers identify what physical and biological habitat functions are present on any given stretch of stream, and then identifying and customizing what conservation practices are needed on a given farm to solve the habitat problems, through the development of a farm plan.

For more information on how to receive a copy

The draft guidelines document is available in three formats: a CD, a hard copy format, or by accessing the AFW website at: www.conserver.org/afw/files/CIDMP_Draft.pdf

To order a CD or hard copy, please contact Hibba Wahbeh, Washington Conservation Commission, PO Box 47721, Olympia, WA 98504-7721; phone: (360) 407-7219, TDD: (360) 407-6006, e-mail: hwah461@ecy.wa.gov

Send written comments to Paula Smith, address listed on page one.

Comments and Responses: Informal Comment Period and Public Workshops

Agency Roles

1. What is the role of National Marine Fisheries Service (NMFS) in this process? ⁱ

- a) The AFW Process: The National Marine Fisheries Service participates in the AFW process in cooperation with the State of Washington and the other caucuses and participants. NMFS participation is premised on its responsibility as the Federal agency with jurisdiction covering anadromous salmon under the Endangered Species Act (ESA). As a result, NMFS's role in the AFW process has been to inform the process on issues related to the legal and regulatory requirements of the ESA, as well as the habitat requirements of anadromous fish.
- b) The CIDMP Guideline Development Process: The National Marine Fisheries Service participated in this process as a member of the Executive Committee and Workgroup. NMFS's role as a participant comported with the description of NMFS's role in the AFW process, above.
- c) The CIDMP Process: As the Federal agency with jurisdiction over anadromous salmon protected by the ESA, NMFS will maintain a lead role on ESA issues in working with Irrigation Districts that have engaged the CIDMP process. This role could include, among other things, assisting Irrigation Districts in formulating long-term conservation plans that will qualify CIDMPs for coverage under the ESA.

2. What is the role of the Washington State Conservation Commission? ⁱ

The Governor's 2000-01 biennial budget included money earmarked for the Washington State Conservation Commission to begin the AFW process. These funds cover staff to support the initiative and logistical expenses (e.g., renting meeting facilities), printing/postage, and small grants to participating caucuses. We anticipate funding for the 2001-03 biennium to continue the process. AFW CIDMP participants, including the Conservation Commission, will seek funding sources for CIDMP implementation.

3. What is the role of the Conservation Districts? ⁱ

The 48 Conservation Districts across the state are expected to play a larger role in the AFW Field Office Technical Guide (FOTG) process, providing technical assistance to individual landowners in the development of farm plans. However, as it relates to the Irrigation Districts' process, Conservation Districts may be providing technical assistance to smaller Irrigation Districts and, potentially, outreach to individual landowners who have their water supplied by Irrigation Districts. Because Conservation Districts play an important role in 2514 Watershed Planning processes and 2496 Salmon Recovery planning efforts, and CIDMPs are expected to integrate with these processes, collaboration between Conservation Districts and Irrigation Districts may occur during CIDMP development.

Anticipated Timeframes

- 1. Once the pilot projects have been selected what is the timeframe of the process?**ⁱ

With secure funding for the pilot projects in place, the length of time to develop a Plan is dependent on resources available and scope of work. This will vary from district to district. Pilot projects are designed to tell us how long the planning process will take.

- 2. Timeframes for how long it will take to develop the plan in phase one are missing.**ⁱⁱ

One objective of the guidelines is to expedite compliance. The guidelines achieve this objective by establishing a step-by-step CIDMP development process. This includes educating both the agencies and the Irrigation Districts about each others' standard operating procedures and regulations, and by clearly describing information needs and available compliance options. As in the case of the pilot projects, the length of time to complete the planning process will vary from district to district.

CIDMP & Relationships to FOTG Process

The following two comments are answered following the second bullet.

- 1. Although both the CIDMP and FOTG guidance documents have the same goals, to provide compliance with ESA and CWA requirements, there is no discussion in the CIDMP guidance of how these two processes will fit together.**ⁱⁱⁱ

- 2. A more detailed explanation of how the Guidance options will coordinate with the field office technical guides (FOTG) revisions for farm practices.**^{iv}

The Irrigation District guidance document is a systems-approach to dealing with ESA/CWA. The revised Field Office Technical Guides (FOTG) will be used voluntarily on a farm-by-farm basis. These two processes are intended to complement one-another, to the extent the FOTG practices when applied on farm improve the quality of water delivered from the farm to the Irrigation District's drain. This will make it easier for the Irrigation District to meet the goals of their plans.

Contact Information in Appendix A

The two following comments are addressed after the second bullet.

- 1. Page A-2: In the block referencing State Water Quality Laws and Regulations suggest Ecology be identified as a state agency source of information and adding the Ecology web site.**^v

- 2. Page A-6: Suggest adding Ecology as a water quality funding source (e.g., CCWF, SRF and 319) and adding the Ecology web site. ^v**

These references will be added to Appendix A, "Websites/Contacts for Information and Assistance."

- 3. In the list of contacts and assistance sources in Appendix A, it might be useful to give a sentence of general background explaining where these addresses came from, since not all of the recommended contacts were the obvious ones for expertise. Please add Ecology's Watershed Planning web-site to the matrix. ^v**

The list of contacts and resources mentioned in Appendix A was collated from many sources, and it would be impossible to go back and give credit to each.

The web-site address for Ecology's Watershed Planning initiative will be added when revising the final version of the CIDMP.

District Operations

- 1. Would agreements have to be developed for each Irrigation District? ⁱ**

The AFW CIDMP process operated on the basis of allowing each district to decide for itself if it needs and/or wants to complete a CIDMP. However, the planning process is flexible and allows a group of districts to join together in devising a joint CIDMP. The goal is for the local entities to decide what works best for them.

- 2. Are pilot projects the planning stages of the process? ⁱ**

The CIDMP pilot projects are intended to complete the planning process. However, activities do not end with the completion of the planning process. A CIDMP completed and agreed to by a district and the fishery Services will contain commitments to attain funding for plan implementation and to complete implementation in accordance with the agreed upon schedule. The legal coverage envisioned by the CIDMP process requires successful implementation of the CIDMP.

- 3. Page 5: re-do the language to reflect that not all Irrigation District's diversions are screened. ^{vi}**

In most cases Irrigation District diversions are screened. Because screening requirements change over time to fit specific needs, some district operated fish screens may need to be updated. Screens maintained by private ditch companies and individuals may have a lesser percentage of approved fish screens or they may not have screens at all. We did not conduct a survey to quantify the need for approved fish screening but can safely assume fish screen installation and improvement may be needed.

- 4. The guidance should address the question of how operational and facility commitments will affect the Irrigation District's ability to provide irrigation**

waters to their customers and what changes in customer practices and uses can be imposed on the customers by the Irrigation District ESA agreements. ⁱⁱⁱ

Irrigation Districts are units of local government whose boards of directors are made up of elected officials answerable to the public. In the normal course of business, districts regularly make important decisions related to conservation and water quality improvements through their elected board of directors. Decisions related to developing a CIDMP would be treated similarly by the board.

Additionally, most Irrigation Districts involved in conservation and water quality projects have found it useful to communicate with water users about the need for such projects and the long-term goals to be achieved. For the most part, districts have been successful in water resources planning without the need for imposition of mandatory practices on water users. Instead, water users have seen the wisdom of conserving water and improving water quality when addressing both environmental goals and long-term drought planning.

5. The CIDMP guidance should address the obligations, if any, of Irrigation District customers to ensure that they do not contribute to or cause water quality violations in Irrigation District waters or downstream waters. ⁱⁱⁱ

The CIDMP addresses the obligations of Irrigation Districts. Customers are still responsible for compliance with the CWA and ESA.

Endangered Species Act & Clean Water Act

1. What is the Programmatic Certificate of Inclusion? ⁱ

The concept of the certificate of inclusion is addressed in Appendix C, "Pathways to ESA Compliance." Conceptually, the Certificate of Inclusion is a mechanism that enables an individual constituent to garner the assurances of a larger conservation plan (an "umbrella" plan) by committing to implement the minimization and mitigation measures prescribed by that plan. The commitments of the umbrella plan are recorded in the certificate. The certificate renders the holder accountable for implementing the measures in the umbrella plan. Historically, this mechanism has been little used but might be useful where several smaller Irrigation Districts pool resources and cooperatively develop a conservation plan, for instance at a watershed or county level, with the intent of garnering assurances under the ESA.

2. Are there any regulatory changes associated with CIDMP? ⁱ

No, it is an attempt to clarify existing ESA/CWA statutes and regulations. No changes to existing regulations have been made, nor new ones proposed.

3. How is ESA buy-off granted? ⁱ

The completed and approved CIDMP will form the basis of an agreement between the Irrigation District and the Services. That agreement will then be processed under one of the three ESA "pathways" that are more fully described in Appendix C of the CIDMP guidance document.

For species listed as threatened, under ESA Section 4(d), assurances can be provided in the form of a limit of “take.” Typically these assurances are provided after a commitment to implement a conservation plan which improves or protects threatened species or its habitat is agreed upon. “Take” can be generally described in an initial 4(d) rule and limitations on that definition subsequently approved and added to the rule.

Under Section 7, ESA assurances are granted in the form of an allocation of incidental take. This allocation is written into an Incidental Take Statement attached to a Biological Opinion. A Biological Opinion is the product of interagency consultation between a Federal action agency and either or both of the United States Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS).

Under Section 10, ESA assurances are granted in the form of permission to commit incidental take. This permission is recorded in an Incidental Take Permit that is issued to the developer of an approved Habitat Conservation Plan (HCP).

4. What factors/criteria of the CWA are involved? ⁱ

EPA-approved Washington Water Quality Standards and their criteria are the main CWA drivers. Section 303(d) listing of impaired waters then triggers the need for Total Maximum Daily Load (TMDL) plans. For waters impaired by pollutants, the TMDLs then result in implementation plans that are meant to bring the waters into compliance with the standards.

5. What are the options for coverage under CIDMP? ⁱ

ESA coverage options are discussed in detail in Appendix C, "Pathways to ESA Compliance" of the CIDMP." These include Sections 4(d), 7, and 10.

For CWA compliance the CIDMP process will rely on the TMDL approach, regardless of whether the waters of interest are on the 303(d) list. The advantages of the TMDL as an analytical tool are discussed in Chapter 2 of the guidelines.

6. Does the CIDMP process function as a mini or preliminary Habitat Conservation Plan (HCP)? ⁱ

There is no provision in the ESA for what the comment refers to as a “mini” or “preliminary” HCP. The end product of an individual CIDMP process could be the approval of a CIDMP as an HCP, garnering all of the assurances that an approved HCP would provide.

In many cases, the HCP pathway provided in Section 10(a)(1)(b) would best fit the needs of an Irrigation District seeking assurances under the ESA. In other cases the product of the CIDMP process could be a similarly structured conservation agreement that is submitted as an element of a Federal Action

subject to interagency consultation under ESA Section 7(a)(2). Finally, the product of the CIDMP process could be a program that qualifies for inclusion in a limit on the take definition under ESA Section 4(d). Again, these options are fully discussed in Appendix C to the draft guidelines.

7. How is CIDMP used to develop an HCP?ⁱ

The CIDMP process is designed, with the help of the Technical Advisory Team, to lay out the specific issues for the Irrigation District following the process. Once the issues have been identified, the Irrigation District can then analyze the comparative risks it has under the various alternatives or pathways listed in the CIDMP. If the Irrigation District determines its best choice is development of an HCP, then it would follow the procedures given by either NMFS or USFWS in developing the Plan. The preliminary information gathered and analyzed following the CIDMP process should go a long way to creating the basis for an HCP, but it would not be an HCP.

8. Is certainty granted while working on the CIDMP process?ⁱ

No. Under the ESA and CWA, third party lawsuits can be filed at any time. The CWA doesn't give any immunity from this action. Certainty of no legal action is not possible. However, the level of risk by an appellant is greatly reduced if an Irrigation District can show its actions in developing solutions to problems.

The Services have not traditionally granted any form of plenary certainty during the conservation planning process. At the same time, the Services have never engaged in enforcement activities concerning participants involved in long-term conservation planning during the course of assisting in the development of such plans. However, despite these historic working protocols, nothing would prevent a third party from exercising their rights to sue under Section 11 of the ESA.

9. Stronger "certainty" language, i.e. regulatory recognition.^{vi}

It is not clear what the respondent is asking for here. It may not be possible to strengthen the regulatory recognition.

10. Mention and justify alternatives to take.^{vi}

The CIDMP wasn't developed to be a regulatory document. To list and justify alternatives to take is a decision that has to be made by NMFS or USFWS on a case-by-case basis. The CIDMP might include a list of actions that might be considered alternatives to take such as screening, conservation of water, etc. These actions would be specific to the Irrigation District and the development of their CIDMPs. Please refer to Appendix C of the CIDMP document.

11. Accurately describe that state standards are not automatically approved to prevent take.ⁱⁱⁱ

State water quality standards and other state environmental regulations were not specifically written to “prevent” take. Rather they are typically aimed at providing protection for the resource of concern. Actions that comply with many state laws, the hydraulics code for example, may result in a take of listed fish. The ESA does not prohibit all take of listed species; rather, it prohibits unauthorized take. The CIDMP process is not expected to achieve a “zero take” level of protection. The goal of the process is to limit the amount of take to a level that will allow the listed species to recover.

12. The CIDMP guidance appears to accept the premise that Irrigation District canals are waters of the state that must meet water quality standards adopted by the state and approved by EPA. Irrigation Districts and their users do not universally accept this characterization. ⁱⁱⁱ

This is a significant point of difference in interpretation. Not all Irrigation Districts accept that canals are waters of the state. EPA and Ecology view canals as waters of the U.S./State as upheld in recent case law.

The emphasis to meet water quality and fish habitat needs in-stream will also provide water quality benefits throughout the irrigation delivery system. Water quality in operational spillways, canals, or drains that contain fish or that discharge to waters containing listed fish is an ESA compliance issue. To the extent that fish are harmed by water quality problems originating within an Irrigation District, the district or the individual farmer responsible for the harm, are potentially liable under the ESA.

13. It is apparent that each Irrigation District must, in reality, select one of the pathways. There is no "do nothing" alternative. The "no effects" option is not a do nothing option. ⁱⁱⁱ

Irrigation Districts seeking to acquire assurances under the ESA may avail themselves of any of the pathways described in the draft guidance. The basis for seeking such assurances is concisely described in Chapter 2 of the guidance. Irrigation Districts finding themselves subject to the uncertainty described in Chapter 2 might decide that doing nothing is not in the best interest of the Irrigation District. However, nothing in the guidance is intended to suggest that Irrigation Districts must do anything other than comply with the ESA and CWA.

14. An alternative path could be for Irrigation Districts to develop a universal set of actions that must be taken to avoid take and the CWA TMDLs similar to those developed in the Timber, Fish and Wildlife agreement and subsequently adopted as forest practice rules. It is not clear whether the AFW Irrigation District Workgroup considered this option in the Guidance document. ⁱⁱⁱ

The AFW Irrigation District Workgroup did not consider this option in the guidance document because the rule-making process was not acceptable to Irrigation Districts. As the forward of the guidance indicates, the Irrigation District process was developed to be voluntary and incentive based. However, some of the same methods discussed in Timber, Fish, and Wildlife for getting ESA

coverage, i.e., 4(d), Section 7 and the development of an HCP may be pathways available to individual Irrigation Districts. Conversely, the elements addressed by an Irrigation District in a CIDMP include facilities improvements, operational and policy changes and a monitoring program specific to a district's operations. Because each district's operations and issues are different, the CIDMP allows districts to tailor an action plan that is effective and implementable for them.

- 15. The Irrigation District must still select from among the chosen pathways to demonstrate compliance. The revised Guidance does not consider a pathway similar to Timber, Fish & Wildlife (TFW), and it does not explain why this approach was rejected.**^{iv}

TFW/Forest & Fish is based on a regulatory state forest practices act and there is no comparable act for Irrigation Districts.

- 16. The Guidance continues to offer incomplete and inaccurate information on the TMDL process and regulations. It seems that, in response to Washington State Potato Commission [initial] comments, they [the Workgroup] have tried to correct the description of the current ESA consultation process for state water quality.**^{iv}

The Workgroup did try to address this issue after the initial comment was submitted. We would need to meet with the Potato Commission for clarification and Irrigation District specific concerns to be able to respond.

- 17. The Guidance's attempt to explain the proposed revisions to the state temperature standards is not correct. The Workgroup needs to make a much better effort to understand the state rulemaking for water quality standards and how they apply.**^{iv}

The purpose of the CIDMP document is to help Irrigation Districts comply with standards, not to address the rule making process for standards. The description of water quality standard review given in the Washington State Potato Commission/Hop Growers of Washington comments is correct. EPA is in the fifth year of negotiations with NMFS/USFWS on the Idaho State Standards and is nowhere near resolution. EPA has decided it will only review modifications to state standards as they came forward and consult on them accordingly.

The Workgroup explained the state temperature standards to the best of their ability. If the Washington State Potato Commission/Hop Growers of Washington would offer more detail on their perceived inaccuracies in the CIDMP document, the Workgroup would be better able to address these points.

- 18. It is not clear why the Workgroup offers the TMDL framework as the only option for demonstrating compliance with the CWA. The TMDL process requires EPA approval and adding so many new preventative TMDLs to the list may result in a major backlog and delay in the process. It also inserts a federal role and control authority over non-point sources, which may go beyond that**

currently authorized by the CWA—a backdoor way of regulating loads from non-point sources.^{iv}

The Total Maximum Daily Load (TMDL) framework is not offered as the only method for demonstrating compliance with the CWA. Water sampling is the only method that completely demonstrates compliance. The TMDL framework is the method specified in the CWA for determining what is needed in the way of Load Allocations to bring the water back into compliance. The TMDL Plan only assesses the issue and quantifies what is needed. The implementation plan for the TMDL then will lay out what Load Allocations are necessary to meet state Water Quality Standards.

It is not expected there will be a very large number of preventative TMDLs. Even though there are 97+ Irrigation Districts in the state, the number that may choose this method of risk reduction will be small. A TMDL, as mentioned elsewhere, only addresses the CWA and water quality standard impaired waters. It does not answer the need by NMFS or USFWS for ESA compliance. Therefore, an Irrigation District that chooses to do a preventative TMDL should combine it with whatever route it chooses to satisfy ESA.

- 19. The revised guidance still does not specifically address the impacts of ESA and CWA compliance on Irrigation District customers. It is difficult to see how the Workgroup can ask for support from affected Irrigation District customers without attempting to explain how the various ESA and CWA compliance options might impact them.**^{iv}

The scope of the CIDMP guidance is to provide a clear description of the options available to Irrigation Districts seeking certainty that Irrigation District operations can continue in compliance with the Endangered Species Act and Clean Water Act. The need for such certainty is a decision for individual Irrigation Districts and their constituents. The value of certainty is related to the possibility that operating in violation of either of these laws could result in interrupted operations, potentially affecting Irrigation District customers. However, describing the effects of compliance or non-compliance with these laws on Irrigation District customers is beyond the scope of the guidance.

- 20. Page 5-5 – #3. Relevant CWA/ESA Requirements: Consider separating the oxygen parameter from “Chemical and biological contaminants” bullet and separately discussing oxygen to clearly emphasize the importance of this parameter to fish life.**^v

The organization of the assessment phase of the CIDMP is derived from the Matrix of Pathways and Indicators used by both the NMFS and the USFWS. This matrix provides a framework for evaluating the effects of actions on aquatic habitats. The current matrix has undergone thorough scientific review and has been applied in a variety of contexts throughout the Pacific Northwest. This demonstrated effectiveness was the basis for agreement on using this approach for the CIDMP process. Although this tool is intended to be revised to reflect new information, no new information supports elevating the dissolved oxygen

component of water quality to a separate category. Dissolved oxygen is undoubtedly important to fish, but the combination of temperature and nutrient parameters in the matrix adequately addresses effects on dissolved oxygen.

Financial Issues

1. Are there federal money/combined funding sources to help pay for this? ⁱ

The participants in the CIDMP Guidelines Manual are jointly seeking funds from the Washington State legislature to provide funding for three pilot planning projects. The group's present and long-term plan is to work together to identify or create funding mechanisms to meet the CIDMP implementation needs. A number of federal funding sources are available for implementation.

2. If we are all after the same thing (saving fish) why is it so difficult to find one source of funding? ⁱ

Salmon recovery funding exists through state, federal and regional entities but no one source exists for all general "salmon recovery" efforts. Each funding source has a specific statutory purpose and process. The CIDMP process is not designed to rewrite statutes or reorganize processes for salmon recovery funding, but may assist CIDMP proponents in accessing available funds.

3. Please describe the economics of the CIDMP process. ⁱ

The CIDMP proponent is responsible for funding the CIDMP planning process. The AFW CIDMP participants recognize the difficult nature of funding conservation and water quality planning and are working together to identify funding for the planning process and to ultimately identify funding for implementation of the final plans.

4. Recognize the concern of the Irrigation Districts buying back water from their customers to dedicate to in-stream flows (this issue might come up in the future so we should aim at it now) in order to fund CIDMPs. ^{vi}

Irrigation District water rights are a pool of rights from all district water users. The CIDMP process envisions both conservation and water quality improvements that collectively improve salmon habitat. It will be up to the district and the Services to devise an appropriate solution they can both agree on, where in-stream flow issues are identified by the biological assessment portion of the CIDMP process.

Due to the similarities in the following four comments, they are addressed succinctly after the fourth comment.

5. The guidance should address the potential "pass through" implementation costs to Irrigation District customers as well as direct costs to the districts' themselves. ⁱⁱⁱ

6. The CIDMP guidance in its final form should contain more information on the various pathways' relative costs and commitment levels, specifically as they relate to Irrigation District customers. ⁱⁱⁱ

7. Implementation costs, especially those costs that would be passed through to the Irrigation District user, are still not addressed.^{iv}

8. The revised Guidance does not provide any more detail on the relative costs and commitment levels of the ESA compliance options.^{iv}

There will be costs associated with the plans and it will be the districts' members that decide how these costs will be addressed, as they are dependent on the scope of the Management Plan and are specific to individual Irrigation Districts. Some costs may need to be born by the individual farmer/member and others by the district. State and federal funding programs, such as the Department of Ecology's Centennial Clean Water Program and/or the State's Salmon Recovery Funding Board may address some costs.

Irrigation District annual operation and maintenance needs are funded through assessments to specific lands within the district. Conservation and water quality improvements have, for decades, been funded in this manner. Districts have also been very successful in securing grants or loans to fund conservation efforts, thus offsetting the need to assess lands for those total costs. This process will continue in the future.

Integrating with other Watershed Initiatives

1. What's the difference between the CIDMP process and the 2514 process?ⁱ

The 2514 process, established in 1998 under 90.82 RCW, was designed to allow local citizens and local governments to join with Tribes to form watershed management planning units to develop watershed management plans. The mandatory component under 2514 is water quantity; optional elements include water quality, habitat, and (in collaboration with the Department of Ecology) may set minimum in-stream flows. Planning units are required to do a detailed assessment of the planning area's current water supply and uses, and recommend long-term strategies to provide adequate water for fish and future growth. This process consists of three phases: organizational, assessment, and planning.

The CIDMP process involves Irrigation Districts who wish to voluntarily develop a comprehensive management plan that would address water use and conservation, and water quality requirements. In doing so, districts would assess operations and develop a plan to deal with necessary changes. Please refer to Appendix B of the CIDMP document.

In some cases, both processes will involve some of the same participants. We are hopeful that the CIDMP process will complement existing watershed initiatives like 2514, and be used to supplement what is being done in local processes.

2. Could the CIDMP process slow down the 2514 process? ⁱ

No, it is more likely that CIDMP development will both hasten implementation of Watershed Plans and enhance their effectiveness. The CIDMP process is seen as an additional tool to help existing watershed initiatives.

Public Involvement/Outreach

1. Is outreach planned to educate the public, Irrigation Districts, etc.? ⁱ

The AFW Irrigation Districts' Guidelines Development process sent caucus representatives to conduct three rounds of public workshops (Olympia, February 26; Wenatchee, February 28; and Tri-Cities, March 1). Workshop participants were encouraged to invite caucus members back for one-on-ones if they had further questions/concerns. Members of the AFW Irrigation District workgroup continue to be available to meet with interested publics or groups regarding the AFW process.

Since the following two comments are similar, they are answered below with one response.

2. The public involvement provisions of the Guidelines are meaningless. We note that the public involvement provisions of the guidelines are permissive rather than mandatory. If you truly want public involvement, they should be mandatory. ^{vii}

3. Please strengthen the public involvement section. I saw nothing, or almost nothing, requiring public notification of plan development and adoption. With an effort so important to salmon recovery as plans like this, I think many people will want to know what is being proposed. Also, when there are watershed planning groups under 2514 or salmon recovery lead entities under 2496, these groups will be very interested in the districts' plans. ^v

We agree that public involvement is an important component to the successful development of a CIDMP. A change to the CIDMP document will be made to clarify the types and levels of public involvement and state that public involvement is a necessary element of the CIDMP process.

4. Several elements of Irrigation District plans could correspond directly to elements being addressed in the planning efforts (especially in watershed planning under 2514), for example, in-stream flow restoration and water quality. In some cases, irrigation entities are participating directly in the watershed planning discussions, which is an ideal manner in which to keep mutually informed. In situations where there isn't a direct link, I think that making some intentional linkages would be very beneficial. In addition to the information sharing related to in-stream flows and fisheries needs, there also are potentially efficiencies related to monitoring. ^v

The guidance document does mention that Irrigation Districts need to be aware of existing watershed initiatives (Chapter 2, Chapter 5, and Appendices B & C).

However, references to watershed planning groups under 2514 and salmon recovery lead entities under 2496 could be included as specific examples.

Tribal Issues ⁱⁱ

(Note: first four comments are addressed in one response immediately following the fourth comment)

1. Page iii (Proposed new text is in italics)

Change first heading to read -

Endangered Species, Clean Water and Reserved Tribal Rights

Change paragraph, starting on 6th line:

.....quality to be compliant with the ESA and the CWA, while honoring tribal fishing rights reserved by treaty, executive order or other agreement; provide meaningful levels of harvestable fish for tribal and cultural needs;.....

2. Page v:

4th paragraph, add sentence on end:

All ESA compliance shall be pursuant to the 1997 Secretarial Order on "American Indian Tribal Rights, Federal - Tribal Trust Responsibilities and the Endangered Species Act."

3. Page vi:

Insert a second paragraph on page vi:

No terms of any CIDMP shall impair or fringe on any federally reserved rights of Indian tribes. CIDMP assessments and implementation measures shall specifically acknowledge federally reserved tribal rights as taking priority over the interests of other entities that do not stand in a trust relationship with the United States.

This language should also be included at the end of Chapter 6, with the heading, Relation of Action Plan to Federally Reserved Tribal Rights.

4. Need to add a paragraph to the CIDMP clearly stating that the resulting HCPs do not supercede treaty rights or federal trust responsibilities.

To avoid redundancies throughout the document, the four comments above will be addressed by incorporating additional text in the introduction of the CIDMP, covering reserved Tribal treaty rights and federal/Tribal trust responsibilities. It was not the Workgroups intention to change any regulations/laws or tribal treaty rights. AFW recognizes the importance of treaty obligations towards tribes, as well as executive orders regarding the trust responsibilities of federal agencies. Please refer to page C-15 in the document.

5. I suggest moving heading "c. Treaty Rights and the Federal Trust Responsibility" in appendix C, p. C-15 to the main body of the document -

probably at the end of **Chapter 2**, the *Endangered Species Act and Clean Water Act: Compliance and Uncertainty*.

The reference made on page C-15 in Appendix C will also be included at the end of Chapter 2.

6. Page 1-1

Add bullet to Step 1:

- *Ensure district operations are not adversely affecting tribal fishing rights secured by treaty and executive order.*

The CIDMP process strictly looks at compliance with ESA and CWA. Federal regulatory agencies that have the responsibility of fish recovery will meet their trust responsibilities in the development of individual plans.

7. Chapter 4 - should include an inventory of all tribal U&A areas or other areas where tribes have reserved rights that are within the area that is impacted by the District's operations.

Chapter 3 encourages CIDMP participants " . . . to invite and consult with the affected Tribe(s) involved in the management decisions that affect the aquatic resources upon which their treaty rights depend."

8. Chapter 5 - should include some discussion regarding assessing the impacts on maintenance of *harvestable* levels of fish stocks.

One of the stated goals in the CIDMP document is for plans to contribute to harvestable levels of listed fish stocks. The assessment in Chapter 5 will look at individual districts' role in meeting that goal. The state is addressing this issue through the "Statewide Strategy to Recover Salmon, "Extinction Is Not An Option." The Irrigation District process is one element of that overall strategy.

Water Flow Issues

1. Questions regarding the impact on flow and water quantity were similarly not addressed.^{iv}

The answer to this question is highly site-specific. To the extent that in-stream flows are below those necessary to support recovery, the Irrigation District must singly, or in concert with other diverters in the affected water body, identify possible actions to achieve sufficient flows. This is covered in detail in Chapter 5 of the CIDMP document.

2. How will in-stream flows be set for purposes of ESA and CWA?^{vii}

Flows are site-specific. The intent of the CIDMP was the development of a process where state and federal agencies set in-stream flows together when necessary. The Department of Ecology is required by law to protect in-stream flows by adopting regulations and managing water uses that affect stream flows. The process used to set an in-stream flow usually begins by consulting with other natural resource agencies and affected Tribes to obtain their recommendations. These entities are invited to participate at every stage of in-stream flow

development, which also includes a public participation component. It is during this process that ESA and CWA issues typically would be taken into consideration.

Under Washington's Watershed Planning Act, outlined in Ch. 90.82 RCW (see page 16 of this document for more detail concerning the 2514 process), watershed planning units may propose in-stream flows to Ecology as part of a comprehensive management plan. Proposed in-stream flows recommended by local watershed planning groups ultimately have to be adopted through Ecology's rule adoption process before they have any legal effect. Nonetheless, this locally driven watershed planning process is seen by Ecology as the future mechanism for in-stream flow-setting processes.

3. What happens with water that is part of a legitimate water right that no longer needs to be diverted or withdrawn because of efficiency improvements in conveyance and on-farm irrigation technologies and practices? ^{vii}

This is highly site-specific. Saved water may go to in-stream and other uses depending on source of funds, needs of districts, meeting in-stream flow standards, and other factors specific to the Irrigation Districts.

This identifies an element of the state's water code, which has a five year "use it or lose it" provision. If water is not put to beneficial use for five consecutive years, it is subject to relinquishment except under certain circumstances. The Washington Department of Ecology sees this as a major disincentive to conservation and major water system efficiency improvements. This is one of the topics addressed in the Governor's legislative water strategy. In some circumstances, especially in areas where there are threatened or endangered fish species, Ecology would like to see conserved water returned to the stream as part of a trust water right.

Miscellaneous

1. Are there many changes to the draft document expected, since there's only two months left before the final CIDMP document is expected? ⁱ

We anticipate the final CIDMP to be completed by the end of May 2001.

2. In my opinion the document is much needed, well put together, and easily understandable. It's obvious that the irrigation community had a great deal of input into the draft document. I don't have any suggestions for improving the draft. Please let me know if any financial assistance is or will be available to develop our CIDMP. We would like to get started as soon as possible. ^{viii}

Thank you. The AFW team acknowledges your anticipation and will keep you informed of further developments.

ⁱ Comments made at public workshops held in Olympia, Wenatchee, and Kennewick on February 27th, February 28th, and March 1st, respectively.

ⁱⁱ Comments submitted by Colville Tribes on February 7, 2001 (Jim Priest).

ⁱⁱⁱ Comments submitted by Potato Commission, Hop Growers, State Horticultural Association, and State Farm Bureau on January 5 & 15, 2001 (Pat Boss).

^{iv} Final Comments submitted by Potato Commission on February 28, 2001 (Pat Boss).

^v Comments submitted by the Department of Ecology (Phil KauzLoric on March 14, 2001 and Cynthia Nelson (Elwha-Dungeness Watershed Lead) on March 30, 2001).

^{vi} Comments submitted by Trout Unlimited on January 3, 2001 (Bill Robinson).

^{vii} Comments submitted by American Rivers on March 27, 2001.

^{viii} Comments submitted by the Sequim-Dungeness Valley Agricultural Water Users Association (Mike Jeldness) on March 16, 2001.